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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 BURT BOBBIE DANIELS,

12 Plaintiff,

13 v.

14 DR. ROBERT SARI, *et al.*,

15 Defendants.  
16

No. 09-1250 RJB/JRC

REPORT AND RECOMMENDATION  
TO DENY IN FORMA PAUPERIS  
STATUS AND DISMISS THE ACTION

NOTED FOR:  
October 23, 2009

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18 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned  
19 Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrate  
20 Judges' Rules MJR 1, MJR 3, and MJR 4. Plaintiff alleges the diagnosis given him as part of his  
21 civil commitment proceeding and treatment does not exist. Thus, plaintiff is collaterally  
22 challenging his civil commitment in this action. (Dkt. # 1). The Court recommends this action  
23 be DISMISSED WITHOUT PREJUDICE.

24 DISCUSSION

25 When a complaint fails to state a claim, or contains a complete defense to the action on  
26 its face, the court may dismiss an *in forma pauperis* complaint before service of process under 28  
Report and Recommendation- 1

1 U.S.C. § 1915(d). Noll v. Carlson, 809 F.2d 1446, 575 (9th Cir. 1987) (*citing* Franklin v.  
2 Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984)). In order to state a claim under 42 U.S.C. § 1983,  
3 a complaint must allege that (1) the conduct complained of was committed by a person acting  
4 under color of state law and that (2) the conduct deprived a person of a right, privilege, or  
5 immunity secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S.  
6 527, 535 (1981), *overruled on other grounds*, Daniels v. Williams, 474 U.S. 327 (1986). Section  
7 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are  
8 present. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020  
9 (1986).

11 When a person challenges the fact or duration of his physical imprisonment, and the  
12 relief he seeks is his immediate release or a speedier release from that imprisonment, his sole  
13 federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). In  
14 June 1994, the United States Supreme Court held that "[e]ven a prisoner who has fully exhausted  
15 available state remedies has no cause of action under § 1983 unless and until the conviction or  
16 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas  
17 corpus." Heck v. Humphrey, 512 U.S. 477, 487 (1994). The court added:

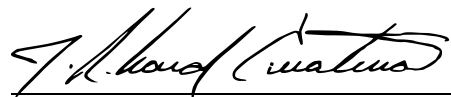
19 Under our analysis the statute of limitations poses no difficulty while the state  
20 challenges are being pursued, since the § 1983 claim has not yet arisen. . . . [A]  
21 § 1983 cause of action for damages attributable to an unconstitutional conviction or  
22 sentence does not accrue until the conviction or sentence has been invalidated.  
23 Id. at 489. "[T]he determination whether a challenge is properly brought under § 1983 must be  
24 made based upon whether 'the nature of the challenge to the procedures [is] such as necessarily  
25 to imply the invalidity of the judgment.' Id. If the court concludes that the challenge would  
26 necessarily imply the invalidity of the judgment or continuing confinement, then the challenge

1 must be brought as a petition for a writ of habeas corpus, not under § 1983.” Butterfield v. Bail,  
2 120 F.3d 1023, 1024 (9th Cir.1997) (*quoting* Edwards v. Balisok, 520 U.S. 641 (1997)).

3 Here, plaintiff is challenging the diagnosis that is the underpinning of his civil  
4 commitment proceedings. A judgment in his favor calls into question the propriety of his current  
5 civil commitment. Plaintiff may not maintain this action as a civil rights action and must  
6 proceed in habeas corpus. Accordingly, this Court recommends that this action be DISMISSED  
7 WITHOUT PREJUDICE and that plaintiff’s application to proceed *in forma pauperis* be denied  
8 as moot.  
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10 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
11 Procedure, the parties shall have ten (10) days from service of this Report to file written  
12 objections. *See also*, Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
13 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the  
14 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on  
15 October 23, 2009, as noted in the caption.  
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17 DATED this 28<sup>th</sup> day of September, 2009.

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20 J. Richard Creatura  
21 United States Magistrate Judge  
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